



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 27, 2016

Mr. L. Brian Narvaez
Counsel for the City of McKinney
Brown & Hofmeister, LLP
740 East Campbell Road, Suite 800
Richardson, Texas 75081

OR2016-09540

Dear Mr. Narvaez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 607873 (Ref. No. 16-18273).

The City of McKinney (the "city"), which you represent, received a request for field notes, measurements, calculations, dash camera video recordings, photographs, and incident sheets pertaining to a specified incident. You claim the submitted information is excepted from disclosure under section 552.130 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the city has only submitted dash camera video recordings of the specified incident. To the extent information responsive to the remainder of the request existed on the date the city received the request, we assume you have released it. *See* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the video recordings we have indicated contain information subject to section 552.130. You state the department

does not have the technological capability to redact the motor vehicle record information from the recordings. Accordingly, the department must withhold the video recordings we have indicated in their entirety under section 552.130. *See* Open Records Decision No. 364 (1983). However, you have failed to demonstrate the remaining video recordings contain any information subject to section 552.130. Thus, the department may not withhold any of the remaining video recordings under section 552.130 of the Government Code.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen’s date of birth is private, the Third Court of Appeals looked to the supreme court’s rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees’ dates of birth are private under section 552.102 of the Government Code because the employees’ privacy interest substantially outweighed the negligible public interest in disclosure.² *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens’ dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3. Upon review, we find the dash camera video recording we have indicated contains information subject to section 552.101 in conjunction with common-law privacy. You state the department does not have the technological capability to redact the information at issue from the recording. Accordingly, the department must withhold the video recording we have indicated in its entirety under section 552.101 in conjunction with common-law privacy. *See* Open Records Decision No. 364 (1983).

In summary, the department must withhold the video recordings we have indicated in their entirety under section 552.130 of the Government Code. The department must withhold the video recording we have indicated in its entirety under section 552.101 in conjunction with common-law privacy. The department must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meredith L. Coffman', with a long, sweeping horizontal line extending to the right.

Meredith L. Coffman
Assistant Attorney General
Open Records Division

MLC/bw

Ref: ID# 607873

Enc. Submitted documents

c: Requestor
(w/o enclosures)